Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 79-479

R. JOHN GENINS,
Petitioner

vs.

HUGH S. GEIGER, JR. and
JUNE W. GEIGER,
Respondents

Petition for a Writ of Certiorari to the Georgia Supreme Court and Court of Appeals of Georgia

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the Georgia Supreme Court and the Court of Appeals of Georgia

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Presented by:

R. John Genins

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INDEX

Page

I. OPINIONS BELOW.....2,Ex.A-C

II. STATEMENT OF JURISDICTION.....2

III. QUESTIONS PRESENTED.....3

IV. LAW RELIED UPON.....3-4

V. STATEMENT OF THE CASE.....4-11

VI. REASONS FOR ALLOWING THE WRIT...12-

VII. CASES CITED

Arnett v. Kennedy, 416 U.S. 134.23

Anderson v. Clark, 70 Ga. 362...14

Bancroft v. Conyers Rlty.Co.....15

Burnstein v. Fogelson.....15

Camp v. Aetna Insurance Co.....20

Davis v. S. Carolina Ins. Co....11

Fisher v. George Jones Co.....14

Geiger v. State of Georgia.....17

Genins v. Geiger.....2

Harris v. State of Georgia.....14

Head v. Lee.....15

Hurst v. Starr.....11

Levey v. Boyer.....14

Neely v. Woodland Bag, etc.....15

Orkin Exterminating Co.v. Townsend15

Page

Pointer v. Texas.....17

Simpson Scale Co. v. Taylor.....15

Thompson v. Clarkson,etc.....11

Thorpe v. Housing Auth.etc.....23

Venture Const. Co. v. Gt.Am.....19

Walker v. Robinson.....11

Re Wall.....23

VIII. STATUTES CITED:

Ga. Code Sec.'s. 1-134,2-107&302..20

20-110.....15

38-114.....14

81A-154(b).....10-11

IX. ENCYCLOPEDIAS CITED:

17 Am.Jur.2d Contracts Sec. 178...20

7 C.J.S., Attorney & Client,Sec.167..15

11 E.G.L. Evidence, Sec. 98.....15

Opinion Below

A copy of the opinion of the Court of Appeals of Georgia affirming the trial court's final judgment is presented herewith as Exhibit A. Copies of the interlocutory judgments of the trial court are presented herewith as Exhibit B. A copy of the Court of Appeals opinion of the appeal from the interlocutory judgment is presented herewith as Exhibit C. This opinion is reported in 144 Ga. App. 244(240 S.E.2d 745) with the change noted herein. The final judgment of the Court of Appeals from which this Application for the Writ of Certiorari is taken is reported at 149 Ga. App. 526(254 S.E.2d 912).

Jurisdiction

This court has jurisdiction to review said decisions pursuant to 28 U.S.C. Sec. 1257(3).

The written opinion sought to be reviewed is the Georgia Court of Appeals' opinion dated and entered March 16, 1979. Petitioner's Motion for Rehearing was denied March 30, 1979. Petitioner's application for the Writ of Certiorari was denied by the Georgia Supreme Court on June 1, 1979, without the record being transmitted to said Court by the Court of Appeal Said Court's Clerk's certificate to this fact is presented as Exhibit D. Petitioner's Motion for Reconsideration was denied by said Court on June 22, 1979, which is within 90 days of the filing of this Petition.

Questions Presented

Was Petitioner denied his United States Constitutional rights guaranteed United States citizens by Article I, Sec. X, Clause I of the United States Constitution?

Was Petitioner denied his United States Constitutional rights guaranteed United States citizens by the Fourteenth Amendment to the United States Constitution?

Because Petitioner was denied the rights guaranteed by the above, should the judgment entered against Petitioner be vacated and judgment be entered in favor of Petitioner or a new trial be ordered?

Law Relied Upon

Petitioner relies upon the following which are set forth verbatim:

1. United States Constitution, Article I, Section 10, Clause 1. Limitations of powers of individual States. "No State shall enter into any Treaty, Alliance, or Confederation grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts or grant any Title of Nobility."

2. Fourteenth Amendment, United States Constitution, Section 1. Citizenship. "All persons born or naturalized in the United States, and

subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

Respondent Hugh S. Geiger, Jr. is referred to herein as "Respondent". Respondent June W. Geiger is referred to herein as "Mrs. Geiger".

Pagination to the transcript of the trial is referred to as (T), the exhibits Transcript as (ET), and the record as(R). (R*) refers to the record transmitted on September 8, 1978.

After Respondent had terminated the employment of seven lawyers who had represented him on his pending criminal case, and had been met with the fact that no lawyer would handle his criminal case for less than a cash fee of $25,000, Respondent prevailed upon Petitioner to handle his legal matters under a contract executed in December 1970 and in January 1971.

Respondent promised to pay Petitioner a retainer of $5,000, which included Petitioner's services for "investigating the facts and law" with respect to Respondent's criminal matter, the costs of investigators hired by Petitioner, and

civil representation wherein Petitioner set aside a $15,000.00 Deed to Secure Debt (R 224) (T 197-198).

Respondent promised to pay Petitioner $50 per hour for certain civil representation and a one-third contingent fee for other civil representation. Respondent promised to pay Petitioner $5,000 to try his criminal case if same became necessary. If the criminal case was successful and Respondent regained his medical license, which he had lost two months prior thereto, Respondent promised to pay Petitioner $25,000. These promises were collateralized (ET 51-57, 34-36).

It is undisputed that Respondent had no complaints with Petitioner's representation until April 30, 1971--the Friday of the second week of Respondent's criminal trial (T 164, ET 10, 18). At that time Respondent told the trial court he was dissatisfied with Petitioner's representation, that he desired to question the witnesses, and urged the court to terminate that afternoon's court proceedings earlier than usual so that Petitioner might go to a doctor. He accepted Jesse Watson, Esquire, as his attorney after that day's trial proceedings were terminated and Petitioner was excused by the court to go to the doctor.

Respondent contended he was abandoned on that Friday, although the District Attorney and another attorney who were present testified in agreement with the trial transcript that Petitioner was excused by the trial judge. Respondent could not recall whether or not the transcript and the testimony of Petitioner, as well as the other two attorneys, was correct.

Respondent admitted instructing Petitioner that he did not want Petitioner's courtroom representation the next week but preferred Mr. Watson.(T 168-169).

The next week, being the last week of Respondent's criminal trial, Respondent was represented in the courtroom by Mr. Watson and himself. Besides being an honor graduate medical doctor Respondent had completed substantial law school training at Emory University. Mr. Watson recalled two of the State's star witnesses and Respondent made a multiday unsworn statement.

Respondent admitted that each day of that week the parties conferred and met to perfect the requests for charge. On Thursday night, Petitioner and Respondent worked on the requests for charge until 3 or 4 o'clock a.m. On Friday, when Respondent finally allowed Petitioner's return to the courtroom, Petitioner tendered the requests for charge to the trial judge, who refused same,stated on the record that Petitioner had abandoned the case and ordered Petitioner out of the courtroom.(T133,138, 170,177)

On May 14, 1971 after his conviction Respondent wrote Petitioner and told him that he wanted Mr. Watson to continue to represent Respondent on the criminal case and Petitioner to continue to represent him on his civil cases. (ET 95-96)(T 184). Respondent not only sought Petitioner's continued civil representation but also wrote that he liked Petitioner very much.

This letter is significant in showing that at that time, immediately after his trial and conviction, that Respondent did not contend he had been abandoned.

After the first mortgagee on Respondent's office property had proclaimed her intention to foreclose the first mortgage (R 202) (ET 81), Petitioner commenced foreclosure proceedings pursuant to his second mortgage on Respondent's office property. Whereupon, Respondents brought the case at bar to enjoin this foreclosure and any other foreclosures on the collateral given for Respondent's promises to pay. Mrs. Geiger claimed that she had superior title to the office property under an unrecorded deed (R 205), that Petitioner had been paid adequately for a civil representation, that Petitioner had not performed the contract for criminal representation, and that therefore the security instruments giving Petitioner collateral rights should be cancelled and the stock and bond given as security should be affirmatively decreed to be delivered back to Respondents. (R 2-14).

When Petitioner's letter demanding possession of the law library collateral reached Mrs. Geiger, she amended her complaint to restrain Petitioner's taking possession of same and subsequently admitted that she had possession of same (ET 92; R 16-17, 23, 71).

On June 18, 1971, the same trial judge who had presided at Respondent's criminal trial presided over the interlocutory injunction hearing. After considering the claimed abandonment at the criminal trial he requested briefs on what he deemed the dispositive issue--Respondent's assertions that the contract was illegal as calling for a contingent fee in a criminal case (R 79, 290-292).

On July 9, 1971, contingent fees in criminal cases were first declared unethical by the Supreme Court of Georgia, there being no previous prohibition (R 293).

On August 9, 1971, the same trial judge dissolved the temporary restraining order which restrained Petitioner from foreclosing on collateral given by Respondent to secure the aforesaid promises and denied "the relief sought in the complaint" by Respondents (R 103).

THIS RULING NECESSITATED A FINDING AGAINST RESPONDENT'S CONTENTION THAT THE CONTRACT WAS ILLEGAL AND VOID AS CALLING FOR A CONTINGENT FEE IN A CRIMINAL CASE.

In the fall of 1971 Petitioner foreclosed on the remaining collateral for $7900--Respondent's interest in the Savannah mortgage (valued by Respondent at $2200), the corporate stock and bond (valued by Respondent at $830), and the law library which Respondents have withheld possession from Petitioner (ET 105). Petitioner had been paid $1700.00 cash of which $1416.33 was for civil representation. Petitioner had out-of-pocket expenses of $901.60 for investigators (ET 104) and $131.01 for Respondent's expenses besides his regular overhead attributable to working on Respondents' cases.

In January 1975 after Respondent's release from prison, Petitioner requested a deficiency summary judgment for the balance of the fee pursuant to the contract which, along with Petitioner's claim for conversion of the law library, was the issue ultimately set for trial in September 1976 after Respondents amended claiming numerous acts of malpractice.

At the trial Respondent abandoned his false claims of malpractice.

At the close of the evidence, another trial judge surprised everyone by announcing

to the jury that he had granted Respondents' motion for a directed verdict and that the contract was illegal, void and violative of the ethical rules of the American and Georgia Bar Associations. He analogized it to an underworld contract and its implementation to the use of the courts to make money "on the economic wheel of fortune by fees being paid if you can spring someone or get them out."

The trial court told the jury the contract was illegal and against public policy but said he was doing so without prejudice to either party. (T 321-322).

The trial judge stated the issue to the jury as whether Respondent fired Petitioner out of the case (T 322) and if he discharged him in the midst of the case then he would be entitled to be compensated for the actual value of the services rendered in the criminal case, unless he had done some act which would bar him from such a recovery, and if Petitioner voluntarily abandoned Respondent's criminal trial then he would not be entitled to compensation.

Although the trial judge had elicited testimony as to what Petitioner had realized on the contract prior to the trial, he refused to advise the jury the effect their verdict would have on those monies and stated that he was declaring the contract illegal without prejudice to either party.

Not even Respondent's counsel understood the trial judge's ruling that it would require the return of all monies and property realized by Petitioner prior to trial--no matter what the jury might rule--until he inquired of same out of the presence of the jury (T 321).

The trial judge directed a verdict in favor of Mrs. Geiger for the return of her interest in the stock and bond and against Petitioner's claims for conversion of the law library.

The jury returned a verdict "for the Plaintiff".

The trial court entered judgment in favor of Respondent finding as a fact that Petitioner was entitled to no fee whatsoever for his civil representation, which return Respondent had not requested, or for the retainer, or for Petitioner's services in obtaining cancellation of the $15,000 Deed to Secure Debt, or for Petitioner's services in investigation of the law and facts, or for expenses incurred for investigators, or for costs advanced.

The trial court found as a fact that the jury's verdict meant Petitioner was due no compensation whatsoever and the judgment required Petitioner's return to Respondents of all monies, collateral, and what was realized from the collateral prior to trial plus interest--which amounts and interest had not been prayed for by Respondents and none of which had been required by the verdict for the Plaintiff.

This "judgment" in favor of Respondents was entered on October 6, 1976, (R 282) and the judgment in favor of Mrs. Geiger granting her affirmative equitable relief and precluding the conversion claim was entered on March 20, 1978 (R* 156).

Because Mrs. Geiger did not obtain her judgment until March 20, 1978, the judgment in favor of Respondent was not final for purposes of appeal until that date. Ga.

Code Sec. 81A-154(b); Hurst v. Starr, 226 Ga. 42 (172 S. E. 2d 604); Thompson v. Clarkson Power Flow, Inc., 147 Ga. App. 770; Walker v. Robinson, 232 Ga. 362 (207 S. E. 2d 6); Davis v. South Carolina Insurance Company, 143 Ga. App. 782, 783 (212 S. E. 2d 802); U. S. A., et. al. v. Peerless Insurance Company, 374 Fed. 2d 942, 944.

The constitutional points raised herein were initially raised in the brief filed in support of Petitioner's motions for judgment notwithstanding the verdict, to set aside the judgment, and to grant a new trial which was filed on April 19, 1978, and in the amended brief in support thereof filed May 10, 1978.

In the interim between Respondent's interlocutory judgment of April 26, 1976, and the final judgment of March 20, 1978, Petitioner sought to appeal from Respondent's judgment by similar motions as set forth above wherein Petitioner pointed out that his contractual rights had been impaired, that he was a victim of a retroactive law, and that he had been denied the fundamental concepts of justice guaranteed by the Fourteenth Amendment to the United States Constitution, which actions were arbitrary.

Neither in the initial appeal nor in appeal subsequent to the final judgment did the trial court or the appellate courts of Georgia comment at all on the United States Constitutional issues raised by Petitioner--which issues were ignored by the judiciary of Georgia in denying Petitioner's appeals.

Reasons for Allowing the Writ

Petitioner was denied the fundamental concept of justice to which all litigants are entitled, that if the opposing party admits in judicio he is entitled to no legal right, a verdict in his favor may not be sustained. Respondent admitted in judicio that Petitioner was neither guilty of abandonment nor breach of contract.

It is undisputed that for the four months Petitioner represented Respondent, including the first two weeks of the criminal trial, Respondent had no complaints with Petitioner's services and that Respondent told the trial judge at his criminal trial this fact. Respondent testified likewise in the case at bar (T 164; ET 10, 18).

Although Respondent contended he was abandoned by Petitioner on April 30, 1971 (T 166), all that he contended was that Petitioner left the courtroom at some time during the afternoon complaining " he couldn't do it anymore" (T 165). Respondent does not remember if Petitioner came back to the courtroom (T 166-167; R 198, 199). Respondent admits in judicio the court terminated that day's court proceedings in Petitioner's presence by excusing Petitioner (T 165-167).

In addition, the transcript of the criminal trial, the testimony of the district attorney who tried the criminal trial, and another attorney who was present that day, verified that the day's proceedings were terminated by the trial judge while Petitioner was present (ET 33; T 216-217; T 206-207).

Therefore, Petitioner submits it is manifest there was no breach of contract or abandonment of Respondent on April 30, 1971.

The proceedings were recessed until the next Monday after Respondent told the court he was dissatisfied with Petitioner's representation, had been wanting to take a more active part, and that he would be happy with Mr. Watson (ET 7-33).

Respondent admitted telling Petitioner on the next Sunday and on several occasions during the next week that he desired Mr. Watson's courtroom representation rather than Petitioner's. The transcript reveals on pp. 168-169:

"Q: I am on p. 36 of that deposition and you were asked this question: Well, now, isn't it a fact that on that Sunday and on several occasions during the forthcoming week that you told me you wanted Mr. Watson to represent you rather than me." And you answered: "You had abandoned me and certainly I didn't want you back after you abandoned me."

"A: That answer as given is true - - -" (T 168).

"Q: You preferred to go ahead with the trial with Jesse Watson?"

"A: Yes, rather than return to the man who abandoned me." (T169).

The deposition of Respondent taken prior to trial, which Petitioner reviewed for errors and made corrections therein, shows the following admissions in judicio that Respondent excused Petitioner's courtroom appearances for the remainder of the trial:

"Q: Well, now, isn't it a fact that on that Sunday and on several occasions during the forthcoming week that you told

me you wanted Mr. Watson to represent you rather than me?"

"A: You had abandoned me and certainly I didn't want you back after you had abandoned me." (R 190-191).

"Q: But you didn't want me to come back the next week?"

"A: In my opinion,that would have been a terrible mistake." (R 235) (Also please see R 231-234).

"Presumptions of law are sometimes conclusive and an averment to the contrary shall not be allowed. These are termed estoppels and are generally not favored." Among these are . . . solemn admission made in judicio. . . Code Sec. 38-114. Fisher v. George's Jones Co., 108 Ga. 490 (34 S. E. 172). "A solemn admission in judicio is an estoppel everywhere and forever;. . . . Anderson v. Clark, 70 Ga. 362". Levey v. Boyer, 217 Ga. 27, 28 (120 S. E. 2d 757). Such judicial admission is conclusive, Harris v. State, 133 Ga. 310, (211 S. E. 2d 144).

Contrary to his conclusory allegation of abandonment, Respondent admitted that Petitioner kept on working on the case and that Respondent and Respondent's wife conferred with Petitioner each day of the next week and delivered papers to Petitioner to facilitate the requests for charge and worked on same until 3 or 4 a.m. on Thursday and presented same on Friday (T 133, 138, 170, 177). He accepted Petitioner's services and did not inform Petitioner to cease working on his case until May 14, 1971, at the same time he requested that Petitioner continue working on civil matters (T 184; ET 95-96), or as he testified May 21, 1971 (T 308-309).

A judicial admission is a nonamendable defect. It is conclusive and cannot be denied or disproved. Orkin Exterminating Co. v. Townsend, 136 Ga. App. 50, 52, 220 SE 2d 14); Head v. Lee, 203 Ga. 190(8) (45 SE 2d 666); 11 E. G. L. Evid. Sec. 98, Harris v. State, supra. Absence from trial with the consent of the client does not affect an attorney's right to compensation (7 CJS, Attorney & Client, Sec. 167, p. 1025.

Petitioner therefore submits it is clear there was no "abandonment," and that Respondent admitted directing Petitioner's nonperformance of the courtroom representation for the balance of the trial, which action could not infringe upon Petitioner's contractual rights.

Nonperformance is excused when it is caused by the act or fault of the opposite party. Code Sec. 20-110.

Where a party prevents the performance of a stipulation of the contract undertaken by the other party, such party is estopped from setting up, in his own behalf, any injury which may have resulted from the nonperformance of such condition. Simpson Scale Co. v. Taylor, 4 Ga. App. 567, 570 (4).

Where an act or performance of one party is dependent upon a corresponding action being previously done or allowed by the opposite party, the law will imply an obligation by the latter to do, or allow to be done, the act or things thus necessary to allow the completion of the contract by the other party, Burnstein v. Fagelson, 38 Ga. App. 294 (143 S. E. 237); Bancroft v. Conyers Realty Co., 63 Ga. App. 110 (10 S. E. 2d 286); Neely v. Woodland Bag & Mfg. Co. 23 Ga. App. 598, 604 (99 S. E. 167).

Wherefore, Petitioner urges that the judgment in favor of Respondent should be set aside and is erroneous because of Respondent's admissions in judicio that there was no breach or abandonment and that he preferred Mr. Watson's and his own more active courtroom representation to Petitioner's.

Petitioner was denied the fundamental concepts of justice guaranteed by the due process clause of the first section of the Fourteenth Amendment to the United States Constitution to:

(a) The right to have his contractual rights unimpaired by an edict of the State Bar of Georgia applied retroactively.

(b) The right to rely on a judicial ruling in the case sanctioning the contract and a foreclosure pursuant to it and to not have the same court reverse its ruling five years later and declare the same contract illegal.

(c) The right to a nonprejudicial charge to the jury on all material issues of the case, which charge does not control the verdict.

(d) The right to correct presentation by the charge to the jury of the sole issue for decision.

(e) The right to have the jury informed of what effect their verdict will have on the ultimate right of the parties.

(f) The right of confrontation of all witnesses against Petitioner.

Respondent, over objection, used the transcript of his criminal trial when Petitioner presented requests for charge

and the trial judge stated Petitioner had abandoned Respondent's case. This denial of the right of confrontation has been held to be a fundamental concept of justice with respect to criminal trials and Petitioner submits should be likewise held with respect to civil matters. Pointer v. Texas, 380 U. S. 400.

The error in allowing this "evidence" is shown from the uncontested facts that the criminal trial judge was not privy to Respondent's strategy asserted in his appeal of his criminal conviction (Geiger v. State, 129 Ga. App. at p. 499) and the logical fact that if that trial judge had really believed Petitioner had abandoned Respondent, he would not have denied Respondents' request for the interlocutory injunction enjoining Petitioner from foreclosing on the collateral to realize his fee.

(g) The right to have the jury determine the factual issues.

(h) The right to be free from a judgment which imposes obligations not requested by the opposite party or imposed by the jury's verdict but simply by the trial judge's findings of facts and forfeitures.

(i) The right to a fair determination of the issues of the appeal by the appellate court in reliance upon the records and contentions of the parties and not have the appellate court find facts neither found by the jury nor contended by the opposing party.

In the initial appeal, the appellate court's opinion stated there was sufficient evidence to authorize a finding of abandonment at a later date (a date subsequent to the Friday mentioned above). When Petitioner pointed out in his Motion for Rehearing Respondent's admissions that Respondent did no

want Petitioner's courtroom representation subsequent to that Friday, the official report of the appellate decision was changed to delete the words "at a later date."

(j) The right to have the appellate court which is vested with the responsibility of deciding issues on appeal decide said issues and not ignore same.

None of Petitioner's constitutional issues were mentioned or discussed by the Georgia Appellate Courts.

(k) The right to not have the trial judge so control the jury as to deny Petitioner's property rights under his contract.

The trial judge questioned Petitioner extensively in the presence of the jury as to what had been realized on the contract, declared the contract illegal without prejudice, but refused to inform the jury that his ruling was not without prejudice--in that whatever the jury might decide--Petitioner would be required to pay Respondent whatever Petitioner had realized on the contract plus interest.

The jury's verdict "for the Plaintiff" under the instructions given by the court could have as easily meant that Petitioner was entitled to no further deficiency but only to what he had previously realized rather than that Petitioner was required to forfeit all that had been realized for (1) the civil representation, (2) the $5,000 retainer which contemplated Petitioner's successful cancellation of Respondent's $15,000 deed to secure debt, Petitioner's time and expenses to investigate the case, etc., and (3) $5,000 to try the criminal case.

Petitioner was denied the fundamental right of a litigant to not be placed in an impossible position for success by the State judiciary handling the case. If the jury had found in favor of Petitioner, any such verdict would have been void because there could be no recovery in quantum meruit where there is a valid written contract. Venture Construction Company v. Great American Mortgage Investors, 134 Ga. App. 440, 444 (214 S. E. 2d 683).

Petitioner submits that all of the above fundamental rights are fundamental concepts of justice and the combined denial of same by the judiciary of Georgia is a violation of Petitioner's rights to his property guaranteed by the due process of the clause of the Fourteenth Amendment of the United States Constitution.

Mrs. Geiger's directed verdict and judgment entered thereon March 20, 1978 (R* 156) are predicated upon the trial court's erroneous impression that the contract was illegally proscribed as a contract calling for a contingent fee in a criminal case. Respondent admitted that the contingent fee was contingent upon success in civil proceedings, if the criminal proceedings were successful, to reinstate his medical license (T 130, 131, 174). Therefore, the court erred in finding the contract as one of those proscribed by the ethical rules of the Georgia Bar.

Even if the contract did call for a contingent fee in a criminal proceeding the legal proscription of same did not become operative until after the contract had been executed and performed. The contract was executed in December 1970 and January 1971 (ET 51-57; R 34-36). The contract was performed between December 1970 and May 1971 (T 103, 184; ET 95, 96). Contingent fee contracts in criminal cases were not proscribed until July 9, 1971 (R 293).

Therefore, the directed verdict in favor of Mrs. Geiger and consequent judgment are erroneous.

The constitutions of both the State of Georgia and the United States guarantee the fundamental right against impairment of contracts. The relevant pre-1976 Georgia Constitutional provision is Article I, Sec. 3, para. II, Code Sec. 2-302 (1976 Constitution, effective January 1977, Code Sec. 2-107); U. S. Constitution, Article I, Sec. 10, Code Sec. 1-134. The Georgia constitutional provision not only prohibits the impairment of contracts but retroactive laws.

"A contract cannot be said to be contrary to public policy unless the General Assembly declared it to be so, or unless the consideration of the contract is contrary to good morals and contrary to law, or unless the contract is entered into for the purpose of effecting an illegal or immoral agreement or doing something which is in violation of law." (Camp v. Aetna Insurance Co., 170 Ga. 46, 50 (152 S. E. 41); 17 Am. Jur. 2d Contracts, Sec. 178, p. 538.

Therefore, the trial court's actions in declaring the contract void deprived Petitioner of these constitutional rights. Certainly the contract was not entered into for the purpose of effecting an illegal or immoral purpose or in violation of law and the general assembly had not declared it to be invalid. Respondent appeared at Petitioner's door without representation and requested Petitioner's representation on the terms set forth in the contract, after he had lost his livelihood and terminated the services of seven previous attorneys he had employed on his criminal case.

Petitioner submits the trial court therefore erred in directing a verdict and

entering judgment thereon in favor of Mrs. Geiger against Petitioner's claim for conversion of the law library; and that either Petitioner should have judgment entered on this claim pursuant to Mrs. Geiger's admission in response to the request for admission or a new trial should be had thereon.

Aside from the fee due for the trial representation, which can be the only possible issue submitted to the jury, which Petitioner submits was improperly submitted as discussed hereafter, the contract called for separate compensation for other legal services, which the trial judge alone found as facts to be forfeited by the judgment, without any jury determination thereof.

The contract called for:

(1) $50 per hour for civil representation plus the costs thereof;

(2) $5000 for:

- (a) A Retainer,
- (b) Investigation of the facts and law relative to Respondent's criminal case,
- (c) Payment of investigators costs, and
- (d) Instituting legal proceedings to cancel a note and deed to secure debt on Respondents' home in the principal amount of $15,000.

(3) $5000 for representation during the trial of Respondent's criminal case if that was necessary (ET 51-57, 34-36) (R 25-34).

Because of the reasons set forth above, Petitioner submits it is manifest that he

completely performed the contract, however, it has never been disputed in the least that Petitioner completely performed (1) and (2).

Respondent paid Petitioner $1700 cash, of which $1416.33 was for civil representation. After the trial judge allowed Petitioner to foreclose on the collateral, Petitioner foreclosed upon Respondent's interest in the law library (which Respondents' have withheld from Petitioner), the corporate stock and bond, valued by Respondent at $830 and the Savannah mortgage valued by Respondent at $2200. (ET 105).

Relying on Respondent's promise to pay the $5000 mentioned in (2) above, Petitioner paid investigators $901.80 and advanced $131.01 for Respondent's costs besides his regular overhead attributable to working on Respondent's cases (ET 104).

Relying on Respondent's promise to pay the $5000 mentioned in (2) above, Petitioner obtained the cancellation of the $15,000 note and deed to secure debt on Respondents' home (T 197).

The District Attorney's remarks regarding Petitioner's investigation seem relevant:

"Mr. England: If Your Honor please, I'm glad to say for the record, and I want to say it in this context. I have tried about 150 felony cases and handled about 10,000; and I have had dealing with many lawyers. I have never had an opponent who called me more, talked to me more, pressed me more before trial for various items of discovery, both that the law allows in criminal cases and beyond what the law allows. I have never seen a defense counsel more diligent seeking out details about his client than Mr. Genins in this case." (ET 12).

Prior to trial, Petitioner obtained for Respondent an offer of a five-year probated sentence (T 22, 226) (R 217, 218).

Wherefore, Petitioner submits that the trial court erred in not setting aside at least that portion of the judgment calling for a forfeiture of (1) and (2) listed above.

Valid contracts are property, and rights arising out of same are protected by the due process clause. Thorpe v. Housing Authority of Durham, 393 U. S. 268, 89 S. Ct. 518.

Substantive contractual entitlements are not to be procedurally undermined. Arnett v. Kennedy, 416 U. S. 134.

Due process is that kind of procedure sanctioned by established customs and usages of the courts. Re Wall, 107 U. S. 265, 2 S. Ct. 569.

How can it rationally be contended that the procedures employed in this case are those established customs and usages of the courts of this land?

In conclusion, Petitioner respectfully submits that the actions of the Georgia judiciary pointed out above both singularly, and especially when combined, demonstrate why the Fourteenth Amendment to the United States Constitution is necessary and proper.

Respondent submits that the aforesaid improprieties are so gross as to be impossible in a rational administration of justice.

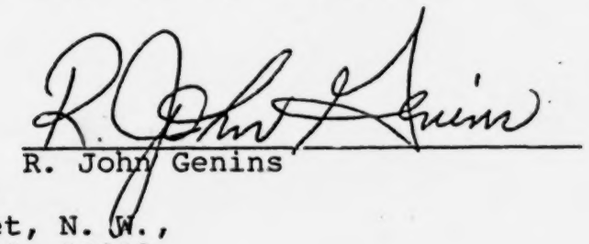
Appellant appreciates the facts that the Fourteenth Amendment does not assure immunity from judicial error, that this court simply does not have the time to review claimed

evidentiary errors, that pro se applications are not favored, that certiorari is a matter of sound judicial discretion and that this court is responsible for the judicial rights of approximately 230 million other citizens.

Petitioner, as a licensed Georgia attorney for in excess of 15 years, and of this court, has no more rights than any of the other 230 million United States citizens. However, the record of this case demonstrates the foregoing arbitrary actions of the Georgia judiciary, all subsequent to Petitioner's criticism of the political positions held by many of the same persons when Petitioner ran for the mayorality of the City of Atlanta.

Petitioner earnestly prays this court will at least consider his cause.

Respectfully submitted:



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